

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:12-PO-61
)	
SCOTT WEST,)	(SHIRLEY)
)	
Defendant.)	

MEMORANDUM AND ORDER

This case is before the Court on the Defendant's Motion to Continue [Doc. 10] his December 4, 2012 trial date. He contends that (1) he needs additional time to litigate discovery issues regarding data from the EC/IR II used to test his blood-alcohol content on January 1, 2012, and (2) his expert Mary Catherine McMurray is not available on December 4, 2012, because she has been subpoenaed to testify in a Wisconsin state court on that date. The parties appeared before the Court for a hearing on this motion on November 30, 2012. Assistant United States Attorney Melissa M. Kirby appeared on behalf of the Government. Attorney Edward L. Holt represented the Defendant. Shortly before the hearing, defense counsel filed Ms. McMurray's curriculum vitae along with her eight-page affidavit [Doc. 11-1] stating that data constituting an operational history of the machine and stored in the EC/IR II is necessary and relevant to determining the EC/IR II's reliability.

After considering the arguments of the parties, the Court **DIRECTED** the Government to provide the following three items to the Defendant in discovery:

- (1) The printout showing the results of the EC/IR II's diagnostic self-test on January 1, 2012, at 11:00 a.m.;
- (2) The printout showing the results of the EC/IR II's diagnostic self-test one week before January 1, 2012; and
- (3) Any diagnostic information collected by the EC/IR II at the time the Defendant was tested on January 1, 2012, or alternatively, information about any self-diagnosis performed by the machine between 4:00 a.m. and 10:00 a.m. on January 1, 2012.

The Court also heard the parties' arguments on continuing the trial date. The parties told the Court that the Defendant's expert had not been subpoenaed in this case. The Court concluded that the trial should be continued to permit the Defendant's expert to attend. Accordingly, the Court instructed the parties to check the schedules of their witnesses and to participate in a telephone conference to set the new trial date. On December 4, 2012, the parties participated in a scheduling conference with the Court by telephone. AUSA Kirby represent represented the Government, and Attorney James A.H. Bell represented Defendant West. The parties agreed on a new trial date of January 11, 2013, at 9:30 a.m.

The Court finds good cause to continue the December 4 trial of this case. A continuance furthers the ends of justice because it permits the Defendant's expert witness to appear. Accordingly, the Defendant's Motion to Continue [**Doc. 10**] is **GRANTED**, and the trial of this case is reset to **January 11, 2013, at 9:30 a.m.**

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge